



NOTICE OF ACTION TAKEN

DOCKET OST 97-2633

This serves notice to the public of the action described below, taken orally by the Department official indicated.

Applicant: **Philippine Airlines, Inc.**

Date Filed: June 18, 1997

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between Manila, the Philippines, and Chicago, Illinois; Dallas/Ft. Worth, Texas; Miami, Florida; and Washington, D.C., under a code-sharing arrangement with American Airlines, Inc.

If renewal, date and citation of last action: New authority.

Applicant representative: Joseph Schmitz, (202) 457-6000

Responsive pleadings: United Air Lines, Inc., filed a consolidated answer to this application and to a request by American Airlines for statement of authorization to conduct these code-share operations on behalf of PAL. American and PAL filed a joint reply, and United filed a response to the joint reply of American and PAL. United argued that the requested authority was extrabilateral because the 1995 Memorandum of Consultations between the United States and the Philippines specifies that code-share operations are limited to designated carriers and American is not designated under the U.S.-Philippine aviation agreement. In addition, United stated that the Department should not grant unilateral and discretionary approval of this code-share since the Philippines has a history of not enforcing the provisions of the agreement, such as the right of U.S. carriers to ground handle non-Philippine carriers at Philippine airports. In this regard, United stated that local airport authorities in the Philippines have not permitted United to self-handle or provide ground handling to other carriers. In these circumstances, and particularly given the specific language of the aviation agreement, United stated that it opposed the requests, unless the Philippines provided assurances that all designated carriers could code-share with non-designated carriers.

American and PAL argued in their reply that PAL's agreement with American does not require extrabilateral authority since PAL has long held the right to code-share with non-designated U.S. carriers and the 1995 MOC should not be construed as restricting this right. They also stated that no other carrier shares United's interpretation and United has not objected to similar applications in the past. Moreover, they stated that even if their request was extrabilateral, the code share should be approved on the basis of reciprocity since U.S. carriers operate more frequencies than Philippine carriers and the two countries have a good aviation relationship. Finally, they stated that United's opposition is an attempt to frustrate the additional competition that PAL would provide by gaining access to American's large U.S. network.

DISPOSITION

Action: Approved ¹

Action date: April 6, 1998

Effective dates of authority granted: April 6, 1998 - April 6, 1999

Basis for approval: We found that the requested exemption authority was consistent with the U.S.-Philippines Air Transport Agreement, as amended, which provides, among other things, that Philippine carriers may serve up to eight additional U.S. points on a code-share basis. With respect to the issues raised by United concerning the proposed code share operations themselves, we noted that, prior to the 1995 MOC (which provided, among other things, for amendment of the code-share provisions of the U.S.-Philippine aviation agreement), both sides interpreted the agreement as requiring them to approve code-share operations of the type requested here. While the code-share language was amended in 1995, neither Party has construed that amendment as derogating from the rights previously available. Since the type of authority at issue here was available under the bilateral regime that prevailed prior to the 1995 amendments, and since the 1995 amendments clearly did not alter that regime as would affect this type of request, we found no basis to withhold the authority requested by PAL and American, or to seek

¹ We concurrently issued a Notice of Action Taken approving American Airlines' request for a statement of authorization to conduct these code-share operations on behalf of PAL.

additional assurances from the Philippines regarding the code-sharing provisions of the aviation agreement. Should the Philippines not approve similar arrangements between U.S. and Philippine carriers, we are prepared to reconsider the award of authority granted here.

While we are interested in the ground handling issue that United has raised, we were unable to conclude on the present record that it provided a persuasive basis to withhold the requested authority. However, we are prepared to explore the issue more fully with United and, should circumstances warrant, to raise the matter directly with the Government of the Philippines.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☐ Standard exemption conditions (attached)

☒ Foreign air carrier permit conditions (Order 82-12-115)

Special conditions/Remarks: This authority is also subject to the following conditions:

- (a) PAL may serve the U.S. points authorized above only on a code-share basis;
- (b) PAL and/or American Airlines must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or the carriers cease operating the approved code-share services;
- (c) The code-sharing operations conducted under the authority granted here must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere, and that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept all obligations established in its contract of carriage with the passenger; and
- (d) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)